True Independence for Medical Examiners Equals Due Process for Criminal Defendants and More Efficiencies in the Criminal Justice System

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I. INTRODUCTION

On April 9, 2007, Nicole Marie Beecroft stabbed her newborn infant daughter over one hundred times.\(^1\) She was seventeen years old at the time and concealed the pregnancy from her family and all but one of her friends.\(^2\) She delivered the baby alone in her...
home. Immediately after the child was born, Beecroft stabbed her infant for no apparent reason and left the body in the trash.

There was never any dispute as to whether Beecroft stabbed her newborn infant. She confessed she had. The sole issue for the trier of fact to determine was whether the baby had been born dead or alive. The Beecroft defense team contended that there was reasonable doubt as to whether the baby was alive at birth, making the death not a murder but instead a horrific act to end a tragic story. The prosecution contended the baby was born alive and that the horrific act was murder. Both defense and prosecution needed to rely on experts, in this case medical examiners, to determine and testify as to whether the baby was dead or alive when she was born.

This article will address the necessity for criminal defendants, such as Beecroft, to have the same access as prosecutors to qualified medical examiners within the State of Minnesota. This equal access is necessary so that medical examiners can help finders of fact better understand medical evidence offered by both sides at trial and avoid wrongful convictions. In addition, equal access to qualified medical examiners can help level the playing field between the prosecution and defense, ensure that criminal defendants are afforded due process of law, endorse the independence of medical examiners, improve the medical examiner community through peer review, and facilitate trial efficiency. To ensure equal access, medical examiners should be encouraged to testify for the defense where they deem it appropriate and should not be subjected to any form of intimidation or contractual obligation which would prevent them from doing so.

3. Transcript of Record, supra note 1, at 69.
4. Id. at 330.
5. Id. at 329–30.
6. Id. at 72.
7. See id. at 71–72.
8. Id. at 52, 1068.
9. Id. at 1073–74.
10. See infra Part III.
11. See infra Part III.A.
12. See infra Part III.B.
13. See infra Part III.C.
14. See infra Part III.D.
15. See infra Part III.E.
16. See infra Part IV.
II. BACKGROUND

On April 10, 2007, the St. Paul Police Department received an anonymous phone call reporting a newborn baby thrown into the trash.\(^{17}\) The next day, Dr. Kelly Mills, Assistant Ramsey County Medical Examiner, found 135 stab wounds on the body of Baby Beecroft.\(^{18}\) With law enforcement looking on, it took the medical examiner only an hour to conclude that the infant had died from the resulting blood loss.\(^{19}\) Armed with this information, police arrested Beecroft, the seventeen-year-old mother of Baby Beecroft, for murder.\(^{20}\)

Following the arrest, there was never a question that Beecroft had stabbed her baby. She admitted this to her mother and brother in a conversation overheard by law enforcement.\(^{21}\) In addition, there was no question that Beecroft knew about her pregnancy and hid her condition, and there was no dispute that she hid the corpse in the trashcan.\(^{22}\) The factual dispute in the case was whether the infant was born alive or was stillborn, and therefore dead before the knife ever touched her body.\(^{23}\) This was the key issue for the trier of fact to determine. This distinction would make the difference between an incomprehensible act and the crime of murder.

At Beecroft’s trial in Washington County, Dr. Mills, along with three medical experts who corroborated her conclusion, felt there was no question that Beecroft was guilty of murder. All four clearly indicated that Baby Beecroft was born alive and died from the stab wounds inflicted by her mother shortly after birth.\(^{24}\) Although these experts felt confident about their conclusions, at least one testified that in many cases it can be difficult to distinguish a live birth from a stillbirth.\(^{25}\) In addition, two of the experts who were convinced that Beecroft was guilty of murder agreed that medical experts have different interpretations about the cause of death in many cases.\(^{26}\)

\(^{17}\) Transcript of Record, supra note 1, at 95, 360.  
\(^{18}\) Id. at 444, 520.  
\(^{19}\) Id. at 68, 468–72.  
\(^{20}\) Id. at 1123.  
\(^{21}\) Id. at 329–30.  
\(^{22}\) Id. at 68–69.  
\(^{23}\) Id. at 72.  
\(^{24}\) Id. at 520, 595–95, 829–30, 848, 864.  
\(^{25}\) Id. at 845.  
\(^{26}\) See id. at 631–32, 848–49.
According to Minnesota statute, a medical examiner is “an independent official of the county, subject only to appointment, removal, and budgeting by the county board.” This statutory independence was acknowledged by the members of the medical community who testified during Beecroft that experts are free to not only disagree with each other, but also to disagree with the party who hired them to conduct or review an autopsy in the first place. In the medical examiner community, as it should be in all expert forensic science communities, a commitment to truth and to science should always come first. If a defense team approaches a medical expert to consult or testify on a case, the expert should feel free to do so during his or her private time.

Due diligence and zealous advocacy require the defense to competently and vigorously cross-examine the State’s experts and have ample opportunity to present opposing expert opinions. Given that independent experts could disagree about the cause of death in this case, the defense sought out its own experts for consultation and testimony to show the trier of fact that members of the medical community were in disagreement over the results of Baby Beecroft’s autopsy. Although the defense was able to present two experts who testified that Baby Beecroft was stillborn, several other experts the defense sought to call had their testimony silenced or diminished throughout the course of the trial by the behavior of prosecutors in the counties where the experts worked.

Dr. Susan Roe, Assistant Medical Examiner for Dakota County, is an expert who both consulted with and was prepared to testify for the defense. Her independence was diminished and she no longer felt able to share her expertise with the defendant after her supervisor, the Dakota County Medical Examiner, Dr. Lindsey Thomas, received an e-mail from Dakota County Attorney Jim Backstrom. Backstrom’s November 5, 2008, e-mail suggested that
Dr. Roe’s potential testimony for the Beecroft defense would be a conflict of interest and would be detrimental to the prosecution. Backstrom indicated to Dr. Thomas that he would not support Dr. Roe in her job if she continued to assist the defense. Dr. Roe was so unnerved by the e-mail that she immediately withdrew from the case, left the state, and hired a lawyer.

Dr. Roe’s fear of losing her job and encountering a potential criminal prosecution was, according to the defense, partially responsible for her subsequent withdrawal from the case. Although Backstrom was later reprimanded by the Minnesota Supreme Court and apologized for the effect of the e-mail, this did not change the fact that Backstrom’s behavior had a chilling effect on Dr. Roe’s participation in the vigorous defense of Beecroft.

Even two years later, Dr. Roe calls what happened to her as a result of her attempt to work with the defense in this case “an awful, horrible experience,” and she went on to say, “[t]’s not worth it.” Dr. Roe has also indicated that, “In retaliation for her testimony in the case . . . prosecutors threatened to file a complaint against her with the state agency that licenses and disciplines doctors and to prevent her from teaching another class at the state crime lab where she has taught regularly for years.”

Dr. Janice Ophoven, Assistant Medical Examiner for St. Louis County, and one of the country’s well-known experts in forensic and pediatric pathology, also had her independence diminished and did not feel free to voice her opinion. In 2007, Dr. Ophoven was pressured by St. Louis County to stop providing sworn
testimony for criminal defendants in Minnesota. Although Dr. Ophoven believed that it was wrong for defendants to be deprived of support from the forensic community, she began to inform defense teams contacting her for testimony of her inability to provide sworn testimony. Even though this ban was lifted in 2009, after backlash from the Backstrom e-mail and a subsequent Minnesota Supreme Court reprimand, Dr. Ophoven is still hesitant to testify for the defense, fearing for her livelihood. For instance, when contacted by the Beecroft defense team, she warned that in no circumstance would she be able to testify for them and that only with great resistance could she even consult with them. She did testify in the post-conviction hearing on the Beecroft case to detail why she was unable to work for the defense. She also stressed her dedication to science and her history of speaking freely about her conclusions to both the prosecution and defense. Although her only testimony occurred at the post-conviction hearing, which regarded only her inability to testify at trial and contained no testimony on the merits of the case, Dr. Ophoven continues to face the ramifications of that testimony.

Dr. Janis Amatuzio, the Anoka County Medical Examiner, also had her independence diminished. She could not express her professional expert opinion as the Anoka County Medical Examiner when she received a communication that the Washington County Attorney’s Office considered it a conflict of interest for her to testify in her official capacity for a criminal defendant. Dr. Amatuzio did testify about her concerns over Dr. Mills’s hasty conclusion, her belief that medical experts should always keep an open mind, and her conviction that Baby Beecroft was not alive at the time she was stabbed. This testimony was colored by the fact that she was told, for the first time in her career, not to represent herself as the Anoka County Medical Examiner. She was denied the ability to testify in her official capacity. Even

43. Id. at 1189–91.
44. Id. at 1189–92.
45. Id. at 1200–01, 1204, 1312–14.
46. Id. at 1203–04, 1242, 1316–17.
47. Id. at 1255–57.
48. Id. at 1324–25.
49. In March 2010 (within weeks of the Beecroft hearing), her academic credentials were challenged in motions filed in the case of State v. Louis Darcell Jones. See Ramsey County District Court File # 62-CR-09-4289.
50. Transcript of Record, supra note 1, at 678.
51. Id. at 677–78, 722–23, 744, 766.
though her professional title is a prestigious one as the Anoka County Medical Examiner, she was only allowed to testify as an individual physician.\(^{52}\) Thus, her testimony did not have the weight of a professional with many years of experience devoted to working with law enforcement and testifying on behalf of the prosecution in numerous cases. This all occurred despite the fact that, as Dr. Amatuzio herself testified, the duty of a medical examiner is not to speak for either side, but rather "to speak for the person who’s died and to render a medical opinion."\(^{53}\)

Beecroft was deprived of the opportunity to vigorously defend herself. Government intimidation prevented Dr. Roe from testifying. Dr. Ophoven and Dr. Amatuzio were also prevented from bringing the full weight of their expertise and opinions to her assistance because of pressure applied by the government. According to a recent article in the American Bar Association Journal,

[t]o many medical examiners, the Beecroft case and Roe’s trepidation sound familiar. They say they’ve been called names behind their backs and had their professional reputations besmirched. They say they have been subjected to intimidation tactics—subtle and overt—and threatened with the loss of their appointed public positions. Their tormenters, they say, are police and prosecutors who criticize them for doing consulting work for the defense.\(^{54}\)

One of Beecroft’s attorneys testified at her post-conviction hearing that, although she did call two experts, Dr. Roe’s experience with neonaticide and Dr. Ophoven’s extensive and specialized training would have enhanced the defense.\(^{55}\) Although a criminal trial should never be a game of numbers, the State presented four experts compared to the defense’s two.\(^{56}\) The need for a greater number of defense experts is evidenced by the fact that during the pronouncement of her verdict and sentencing of Beecroft, the Judge discussed the testimony of the four experts called by the prosecution before concluding that, given all the

\(^{52}\) Id. at 678.
\(^{53}\) Id. at 678.
\(^{54}\) Hansen, supra note 35, at 44, 46.
\(^{55}\) Post-conviction Relief Transcript, supra note 28, at 1337–42.
evidence presented by the prosecution’s experts, the testimony of the two defense experts was not reasonable and failed to create reasonable doubt. The overall balance of evidence and opinions concerning the infant’s manner of death may have shifted greatly if the defense had not been deprived of the ability to effectively represent its client by delivering the full spectrum of testimony available from qualified local experts.

The system must protect defendants like Beecroft from being wrongfully convicted by unchallenged forensic science. With over 260 DNA exonerations to date, there is proof that our criminal justice system is rendering incorrect verdicts. Each of these exonerees represents an individual who was suspected of a crime, prosecuted by the state, and convicted. Each of these individuals spent numerous years in prison before DNA testing ultimately revealed his or her innocence. In approximately half of these cases, one of the contributing factors that lead to wrongful convictions is faulty or incorrect application of forensic science.

These figures may just be the tip of the iceberg. Although many inmates claim innocence, DNA evidence is only available in five to ten percent of cases. In addition, in about 32% of cases, the evidence that Innocence Projects and others seek to test to prove innocence has long since been lost or destroyed. It has been estimated that an accurate wrongful conviction rate that takes these situations into account may be as high as 3.3–5%.

From these first exonerations, it has been determined that the two largest factors common to these false convictions are mistaken eyewitness identification and faulty forensic science. In particular, faulty forensic science has played a role in the conviction of

57. Id.
59. Id.
61. DNA Exoneration Cases Where Evidence Was Believed Lost or Destroyed, THE INNOCENCE PROJECT, http://www.innocenceproject.org/Content/DNA_Exoneration_Cases_Where_Evidence_Was_Believed_Lost_or_Destroyed.php (last visited Nov. 9, 2010).
63. Facts on Post-Conviction DNA Exonerations, supra note 58.
approximately fifty percent of the individuals whose cases were later exonerated through DNA testing. The problems with forensic science have been found in a number of areas. Some forensic tests, such as bite mark analysis and fingerprint analysis, have never been subject to strict scientific scrutiny or may be considered too subjective for courtroom use, and thus may not “meet the fundamental requirements of science, in terms of reproducibility, validity, and falsifiability.” In others, the scientist or technician has overstated the value of the evidence by either: misrepresenting statistics, doing the work incorrectly, or simply lying about doing it at all. For instance, in one account, a West Virginia State Police laboratory employee put more than one hundred criminal prosecutions into question because of his falsification of evidence. Ten men affected by these prosecutions have subsequently had their convictions overturned.

The National Academy of Science (NAS) has also acknowledged many problems with the presentation of forensic sciences in criminal courts. In February 2009, the NAS released a much-awaited report that represented a severe critique of the use of forensic science and questionable expert testimony in the criminal justice system. According to this report “[n]ew doubts about the accuracy of some forensic science practices have intensified with the growing number of exonerations resulting from DNA analysis.” The report went on to say that the growing number of DNA exonerations also points to the need to maintain strong safeguards against the misuse of forensic science in criminal


66. *Id.* at 43 (citations omitted).

67. *Id.* at 45.

68. *Id.*


70. *Id.*


72. *Id.*
prosecutions.\footnote{See id. at 12–13.} At the trial level, competent expert witnesses provide this function. Unnecessary and inappropriate restrictions placed on medical examiners increases the risk of wrongful convictions.

The NAS also made several recommendations to further the goal of eliminating incorrect and inaccurate forensic science from the courtroom.\footnote{See id. at 183–92.} One recommendation is that all public forensic service offices should be removed from the administrative control of law enforcement agencies and prosecutor offices.\footnote{Id. at 190–91.} Although Minnesota Statute section 390.05 specifies that the office of the medical examiner is to be independent,\footnote{Minn. Stat. § 390.05 (2008).} the Beecroft case illustrates that prosecutors may not respect that independence.\footnote{See generally Transcript of Record, supra note 1; Hansen, supra note 35, at 44, 46 (Explaining that the Beecroft incidents “helped expose a deep—and apparently long-standing—philosophical rift between some prosecutors and law enforcement officials, on the one side, and much of the forensic science community on the other.”).}

The value, credibility, and importance of the NAS report was a significant factor relied upon by the United States Supreme Court in a recent decision.\footnote{Melendez-Diaz v. Massachusetts, 129 S. Ct. 2527, 2536–38 (2009).} In Melendez-Diaz v. Massachusetts, the Court held it to be a violation of the Confrontation Clause to allow the prosecution to present a certificate of analysis from a lab technician instead of having the technician present to testify under oath and be subject to cross-examination as to the weight and chemical make-up of a suspected controlled substance.\footnote{Id. at 2531–32.} In part, the Court relied upon the NAS report to support its decision stating that it was evident that “what respondent calls ‘neutral scientific testing’ is [not] as neutral or as reliable as respondent suggests.”\footnote{Id. at 2536.} The Court held that “[f]orensic evidence is not uniquely immune from the risk of manipulation.”\footnote{Id. at 2537.} The Court further found that the Confrontation Clause “is designed to weed out not only the fraudulent analyst, but the incompetent one as well.”\footnote{Id. at 2537.}
It is clear that some areas of forensic science are difficult for non-experts to fully understand. When dealing with complicated areas of biology, physics, and biomechanics, an expert is necessary to assist all of the various players in the criminal justice system to understand and question the value of the evidence. Lawyers, judges, and juries must rely on the expertise of these highly qualified specialists to assist them in determining the ultimate issue in many cases. Both sides need access to these experts to adequately present their respective cases. However, a defendant who cannot obtain an expert to assist in that confrontation is often limited by his or her attorney’s inability to do so. To mount a zealous defense, an attorney must have access to the same quality of experts that the prosecution has to examine the evidence and understand the issues.

In a recent study of the post-conviction DNA exoneration cases, Peter Neufeld and Brandon Garrett determined that defense attorneys often failed to object to invalid forensic science testimony and were ill-equipped to effectively cross-examine the forensic science testimony that was offered by the prosecution. The authors found:

Perhaps defense attorneys cannot be expected to understand scientific evidence and effectively cross-examine state experts, much less test the accuracy of the underlying data, without access to defense experts. Nevertheless, courts frequently deny the defense funding for experts in criminal cases in which forensic evidence plays a central role. The presentation of forensic science testimony is typically one-sided in the majority of states that do not routinely fund the provision of forensic experts for indigent defendants. Moreover, in cases where defendants are able to present expert testimony, the experts are sometimes inexperienced or ineffective, and they may not have access to the underlying forensic evidence. Thus, it should come as no surprise that, despite the stakes, the defense does not often meaningfully challenge invalid forensic science testimony.

84. Id. at 89–90.
Although Beecroft had access to funding and competent experts, the prosecuting authorities in different counties sought to hinder the defense from hiring these reputable local experts. Medical examiners in Minnesota were both covertly and overtly discouraged from testifying for the defense when they should be encouraged to do so whenever their findings conflict with those of the prosecution’s expert medical examiner. Certainly nothing should be done by the State to prevent them from doing so.

III. ANALYSIS

A. Prosecuting Authorities Already Have the Advantage of Access to Local Medical Examiners Who Are County Employees

Medical Examiners, who are responsible for conducting autopsies and determining the cause of death in suspicious deaths, are appointed by the county board and serve the county pursuant to that appointment. In 2009, the Minnesota Coroner’s and Medical Examiner’s Association (MC&MEA) recommended that medical experts should be able, in their free time, to testify, consult with, and review the work of both the prosecution and defense in other jurisdictions where they are not currently employed. Although this article does not argue that a medical examiner should be required or expected to testify for the defense in cases arising in the county where he or she is employed, cases will arise where that would be appropriate and necessary. The MC&MEA’s recommendation is meant both to confirm the independence of medical experts, as well as increase the expert’s credibility, avoiding the perception that they are beholden to the prosecution.

This perception may arise from the fact that law enforcement often works closely with medical examiner offices, calling them upon discovery of an unexplained or suspicious death or to determine the time and cause of death in the case of an obvious homicide. In addition, the police can view the autopsy while it is being conducted and discuss what determinations are being made as the examiner makes them. They also have early access to the

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85. MINN. STAT. § 390.005 (2009).
86. See Minn. Coroner’s and Med. Exam’rs Ass’n, supra note 29.
87. Id.
88. MINN. STAT. § 390.11 (2009).
89. See PRACTICAL GUIDELINES FOR FLORIDA MEDICAL EXAMINERS 21 (2006), http://www.fdle.state.fl.us/Content/getdoc/39299047-da62-43d5-8101-8cea776d10b3
medical examiner’s report, which becomes confidential if the final record of death indicates the manner of death is homicide, undetermined, or pending investigation and there is an active law enforcement investigation. Finally, the medical examiner’s provisional report regarding the suspected time of death, cause of death, and even weapons used can also be instrumental in how the police conduct their interrogation of any suspects and any other investigation.

Although this collaboration with law enforcement is often the most efficient use of resources, it may be problematic and prejudicial in cases, such as Beecroft, where the determination of death is disputable and crucial to the case. Sometimes the cause of death is determined, the medical examiner’s report is written, and the body is buried before the suspect ever talks with his or her counsel for the first time. If the medical examiner suspects the death was a homicide, his or her report is prepared for law enforcement and the prosecuting authority with litigation in mind. If a suspect is charged and the case proceeds to trial, the medical examiner is available to work with the prosecutor to understand the details of the autopsy report, prepare testimony, and develop effective direct and cross-examinations to counter experts for the defense.

From the beginning, the defense is disadvantaged. Because the defense does not have the advantage of a salaried expert already working for the county where the prosecution will take place, it needs to find an expert willing to review the work of the county medical examiner. The defense must also determine how to pay this expert or get a court to order payment, schedule time for review with the expert, and work with the court to schedule the expert’s testimony. The prosecuting authority faces few if any of these logistical difficulties when working with a professional expert who is located in and employed by the same county.

92. See M I N N. STAT. § 390.005 (2009) (“Each county must have a coroner or medical examiner.”); M I N N. STAT. § 390.111 (2009) (stating that the county board is responsible for compensating medical examiners); C O M M. ON I DENTIFYING THE NEEDS OF THE FORENSIC SCI., supra note 65, at 11 (finding that prosecutors are more able to offer expert testimony).
In addition, the victim’s body is generally no longer available for examination. Consequently, the defense expert is left to review the work already done by the State’s expert, based largely on what has already been reported. If the defense seeks to have the body exhumed, the local coroner or medical examiner, whose report the defense is reviewing, must determine that such an act is in the public interest and must also seek consent from the deceased’s legal next of kin or obtain a court order—more obstacles for the defense to overcome.13

B. Due Process

The constitutions of the United States and the State of Minnesota guarantee a criminal defendant the right to due process and a fair trial.14 Due process requires that a defendant have access to “adequate investigative and expert services.”15 Fundamental fairness requires that indigent defendants have “adequate opportunity to present their claims fairly within the adversary system.”16 Under both the United States Constitution and the Minnesota Constitution, “every criminal defendant has the right to be treated with fundamental fairness and ‘afforded a meaningful opportunity to present a complete defense.’”17 In order to present a complete defense, a defendant must be able to present witness testimony on his or her behalf.18 Due process also requires that “[a]ll parties . . . be fully apprised of the evidence submitted or to be considered, and must be given opportunity to cross-examine witnesses, to inspect documents, and to offer evidence in explanation or rebuttal.”19

93. MINN. STAT. § 390.11, subdiv. 3 (2009).
95. In re Wilson, 509 N.W.2d 568, 571 (Minn. Ct. App. 1993); see also Ake v. Oklahoma, 470 U.S. 68, 78–82 (1985) (holding that expert assistance must be provided when necessary to a defense).
Minnesota has a wealth of qualified medical examiners that could be available to assist either side in a criminal case. While there are fewer than 500 doctors qualified to be medical examiners in the country, there are about twenty in Minnesota alone, most working in county medical examiner’s offices. In order to present a complete defense, the defense needs the same access to these qualified experts that the prosecution enjoys. For instance, if there is a significant dispute about the forensic evidence being presented by the prosecution, the jury’s determination of guilt or innocence may rest on their assessment of forensic testimony presented by both sides. Due process requires the ability “to offer the testimony of witnesses so that the defense can present its version of the facts to the jury as well as the state so that the jury can decide where the truth lies.” It is fundamentally unfair to allow only law enforcement and prosecutors to utilize such a valuable resource while preventing the defense from utilizing the same resources. Further, it violates a defendant’s right to present the complete defense that the due process clauses of both the United States and Minnesota constitutions protect.

In Beecroft, the unequal balance of resources between the prosecution and the defense was evident as the parties sought to prove or refute the infant’s cause of death. The expert testimony was very technical in nature. This sort of scientifically based evidence may be difficult for the trier of fact to understand, but at the same time, it may be perceived as more credible than evidence presented by lay witnesses. In order for the defense to fully and effectively challenge this evidence, the defense needs access to reputable experts of the same quality as the prosecuting authority. However, as discussed above, the government sought to limit Beecroft’s access to local experts on several levels. The government denied Beecroft a meaningful opportunity to understand and challenge expert testimony presented by the State when it engaged in behavior that chilled the willingness of local experts to testify on her behalf. This behavior was a significant threat to Beecroft’s due process rights. Above all, “[a] criminal

102. See supra notes 34–54 and accompanying text.
103. See supra notes 34–54 and accompanying text.
trial is fundamentally unfair if the state proceeds against an indigent defendant without making certain that he has access to the raw materials.” This includes reputable local experts who wish to assist the defense, which are “integral to the building of an effective defense.”[104]

C. Minnesota Medical Examiners Are Independent by Statute

Prosecutors who attempt to prevent medical examiners from working with the defense are clearly acting contrary to statute. In 2006, the Minnesota Legislature revised Minnesota’s medical examiner statute.[105] The new statute was endorsed and supported by the MC&MEA, the Minnesota Medical Association, the Minnesota County Attorneys Association, and the Minnesota Funeral Directors Association.[106] The legislature directly addressed whether medical examiners should be available to testify for the defense. The plain language of the statute provides that medical examiners, when requested, may make physical examinations and tests of “any matter of a criminal nature under consideration by the district court or county attorney, law enforcement agency, or publicly appointed criminal defense counsel, and shall deliver a copy of a report . . . to the person making the request.”[107]

Additional changes were instituted in the legislation, including the adoption of new language to reinforce the autonomy of medical examiners. The question of autonomy was directly addressed by new legislation affirming that medical examiners answer to no authority other than the county board.[108] Pursuant to Minnesota statute, a “medical examiner is an independent official of the county, subject only to appointment, removal, and budgeting by the county board.”[109]

Clearly, the legislative intent was to make medical examiners independent from the prosecutors and law enforcement officials they work with so closely. Their employment status was not to be

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[109] Id.
linked to their performance for the prosecution. The legislature found value in their independence. Prosecutors who claim it is a conflict for a medical examiner to work with a criminal defendant are acting contrary to the legislative intent of the Minnesota statute.

The Minnesota Legislature is not the only group to address the significance of an independent medical examiner. The 2009 National Research Council report points out that medical examiners should “not be considered a servant of law enforcement and . . . [should] not be placed in a position in which there is even an appearance of conflict of interest.”\(^{110}\) In addition, the National Association of Medical Examiners, in describing the responsibilities of medicolegal death investigation officers, states that “these officials must investigate cooperatively with, but independent from, law enforcement and prosecutors.”\(^{111}\) Both of these entities recognized, like the Minnesota Legislature, that if medical examiners are not independent from the law enforcement personnel they work with, they could be seen as just another branch of law enforcement.

**D. Peer Review Improves the Quality of the Local Medical Examiner Community**

The MC&MEA believes their profession is best served by allowing medical examiners to review each other’s work.\(^{112}\) Deciding cause of death, time of death, and the numerous other determinations that a medical examiner must make is a complicated process and, in some circumstances, different medical examiners may not agree on those determinations.\(^{113}\) It is through a process of rigorous peer review that science and the profession as a whole improves. If the government prevents the defense from accessing local experts, this professional opportunity is lost. The MC&MEA points out, “Review of any medical examiner’s work by an outside expert represents the highest form of quality control.”\(^{114}\) This commitment to review should also improve the use of forensic

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110. COMM. ON IDENTIFYING THE NEEDS OF THE FORENSIC SCI., supra note 65, at 252.
112. See Minn. Coroners’ and Med. Exam’rs Ass’n, supra note 29.
113. Id.
114. Id.
science in the courtroom because medical experts will know that their work will come under the competent scrutiny of their peers.

If experts disagree about a matter at the very heart of a criminal case, it is essential to due process and the fair administration of justice that both perspectives are presented to the jury. Each side has the opportunity to cross-examine the expert, and the trier of fact can weigh the value of the differing opinions in reaching its determination. If the defense does not have the same level of access to experts that the prosecution enjoys, there is a risk of unreliable evidence being presented in court that has not been subjected to vigorous cross-examination and as a result could lead to more wrongful convictions.\(^\text{115}\)

In the vast majority of cases, the defense expert hired to review the autopsy report will agree with the conclusion of the prosecution’s expert.\(^\text{116}\) In those cases, having an established professional relationship with a local expert could lead defendants to a quicker resolution of cases, or at least a refocusing of where defense resources will be best utilized, therefore conserving judicial resources. Further, if the prosecution is exposed to potential weaknesses in its case early on by a local medical examiner whose reputation is known to the prosecutor, it will enable the prosecution to determine the appropriate course to pursue as a minister of justice.

\(E.\) **There Are Numerous Advantages in Encouraging Medical Examiners to Work with Criminal Defendants When They Determine There is an Inaccuracy in Their Peers’ Work**

In the Garrett and Neufeld study discussed above, the authors raise several issues surrounding forensic experts that can contribute to wrongful convictions: access to evidence, funding issues, and the inexperience or ineffectiveness of experts and counsel.\(^\text{117}\) Their study shows the importance of making qualified forensic experts available to defendants. In the Beecroft case, there were several experienced, local medical examiners willing to work for the defense because they disagreed with the findings of the prosecution’s experts.\(^\text{118}\) It is only because of the pressure placed

\(\text{115} \quad \text{See Melendez-Diaz v. Massachusetts, 129 S. Ct. 2527, 2537 (2009).}\)

\(\text{116} \quad \text{Minn. Coroners’ and Med. Exam’rs Association, supra note 29.}\)

\(\text{117} \quad \text{Garrett & Neufeld, supra note 83, at 89–90.}\)

\(\text{118} \quad \text{See supra notes 34–54 and accompanying text.}\)
upon them by the prosecutors from their respective counties of employment that the defendant’s efforts to present a complete defense were hindered.\textsuperscript{119}

Although some may argue that defendants are free to hire experts from outside of the state to assist in their defense, this argument is problematic for reasons that are both practical and grounded in fundamental fairness. If the defense is forced to go out of the state, they must find a qualified expert in another location where they do not have knowledge of the medical or legal community. This requires an unnecessary investment of time and resources when some of the most highly regarded experts in the field are working in a neighboring county.

Of course, cost and resource allocation are always issues. Unlike the prosecutor, who has liberal access to the county medical examiner,\textsuperscript{120} the defense must determine how to both pay for the expert and then maximize the time it spends consulting with the expert while keeping costs to a minimum. If the defendant makes more than 125\% of the federal poverty guideline, he or she will only be limited by his or her own resources as to the quality of expert and the amount of time and services his or her attorney can contract from the expert.\textsuperscript{121} If the defendant makes less than 125\% of the federal poverty guideline, the taxpayers will ultimately pay for the experts through the state public defender budget and local county budgets.\textsuperscript{122}

In Minnesota, between eighty-five and ninety percent of all felony, gross misdemeanor, and juvenile cases involve an indigent defendant who is therefore represented by a public defender.\textsuperscript{123} By statute, these indigent defendants also qualify for experts who must be paid for out of state and county budgets.\textsuperscript{124} The public defender’s office is allocated a yearly budget for the entire district for all defense experts.\textsuperscript{125} Once that limited budget is exhausted,

\begin{footnotesize}
\begin{enumerate}
\item[119.] See supra notes 34–54 and accompanying text.
\item[120.] See generally MINN. STAT. § 390.11 (2008) (stating that an inquest into a death may be held at the request of the medical examiner and the county attorney or the coroner and the county attorney).
\item[121.] See MINN. STAT. § 611.21 (2008) (stating that only persons making less than 125\% of the federal poverty line may request help in obtaining these services).
\item[122.] Id.
\item[124.] MINN. STAT. § 611.21(a) (2008).
\item[125.] See Russell, supra note 123, at 23.
\end{enumerate}
\end{footnotesize}
the defense must petition the district court for any additional funding.\textsuperscript{126} If that funding is over $1000, then there must be approval from the chief judge of the district as well.\textsuperscript{127} It is up to the district court to decide what reasonable compensation should be in a particular case.\textsuperscript{128} Once approved, these additional costs are paid by the county where the prosecution originated.\textsuperscript{129}

Like public defenders, the costs of these experts, who are necessary for the defense of indigent defendants, are ultimately paid for by taxpayers. Medical examiners who consult and testify from outside of Minnesota can cost more than an equally qualified medical examiner that lives within the state.\textsuperscript{130} In these lean budgetary times, state legislators and county board members are working with limited budgets.\textsuperscript{131} One way for legislators and county board members to make the best economic use of limited resources is to encourage local medical examiners to work for the defense in cases the medical examiners deem appropriate. The medical examiners still collect a fee for services; however, the fee will be substantially less, absent costs for travel and time away from the office. This money could potentially go back into the community. For instance, although Dr. Thomas’s office charges $300 per hour for defense consulting, this all goes to the Regina Medical Center to support the morgue.\textsuperscript{132}

Contrast that with some of the fees in the \textit{Beecroft} case.\textsuperscript{133} The defense did hire and present testimony from one expert from another state, Dr. Charles Wetli.\textsuperscript{134} The costs for his services are illustrative of how expensive out-of-state experts can be. Dr. Wetli’s total bill for this single case was $16,496.92.\textsuperscript{135} Although his review and consulting hourly rate was similar to what an in-state medical examiner might charge for the services rendered to the defense,

\begin{itemize}
\item \textsuperscript{126} M N N. S T AT. § 611.21(a) (2008).
\item \textsuperscript{127} M N N. S T AT. § 611.21(b) (2008).
\item \textsuperscript{128} \textit{See, e.g.}, \textit{In re The Application of Jobe}, 477 N.W.2d 723, 724 (Minn. Ct. App. 1991).
\item \textsuperscript{129} \textit{Id.} at 725.
\item \textsuperscript{130} \textit{Id.} at 725.
\item \textsuperscript{131} \textit{See} \textit{discussion infra} accompanying notes 133–137.
\item \textsuperscript{133} Humphrey, \textit{supra note} 100100.
\item \textsuperscript{134} State v. Beecroft, No. 82-K1-07-002492 (D. Minn. Dec. 1, 2008).
\item \textsuperscript{135} Transcript of Record, \textit{supra note} 1, at 948–82.
\item \textsuperscript{135} Memorandum from Charles V. Wetli on Expenses for Consultation and Trial Testimony (Aug. 10, 2009) (on file with author).
\end{itemize}
the government absorbed significant costs because he came from another state. These costs included: $4000 for a single day for being out of the office to testify; $1875 for one-half day of trial preparation, again out of his office; and $1871.92 in travel expenses. If a local medical examiner with the same expertise and capabilities was used, these out-of-office and travel expenses would not apply; thus, saving thousands of dollars in state and county taxes.

County prosecutors and other officials should find it compelling that forcing the defense to seek expert advice and testimony from out-of-state experts is fiscally irresponsible. When read in conjunction with Minnesota Statute section 611.21, there is a strong economic incentive for the prosecuting authority to recognize the independence of medical examiners and their statutory authority to accept defense work when the expert feels it is appropriate. As discussed above, when a defense counsel needs money for experts, he or she may go to the district court to request that money. If the court grants that request, the money paid to the expert will come from the prosecuting county’s budget. Although local medical examiners charge for their time and expertise, the travel costs and out-of-office fees associated with an expert from another state are not necessary. This saves the county money.

Scheduling time to review the autopsy report with the defense expert can also be more difficult long distance. With an out-of-state expert, review cannot be done face-to-face like the prosecuting authority can with their local county experts. Long distances and less frequent contact may make it more difficult to develop rapport, a professional relationship, and the mutual trust necessary to mount the best defense.

In addition, out-of-state experts may have more difficulties scheduling testimony. Since many trials proceed at a pace that can be erratic, it is often difficult to know exactly when the experts will be called to the witness stand. Witnesses in trial are often placed on standby and need to be ready to testify when called. The

136. Id.
137. Id.
138. See MINN. STAT. § 611.21 (2008).
139. See id.
140. See id. § 611.21(a).
prosecution is again at an advantage because the county’s staff expert medical examiner works nearby—in the same county—and receives her salary from the county. This likely makes testimony on behalf of the county a priority, not to mention easier simply because of the expert’s proximity to the courthouse. For a defense expert who needs to travel from out of the state, and who not only needs to be paid for their travel, but also their time out of the office, the cost and inefficiency are apparent.

These issues go beyond logistics. Perception is one of the key problems that defendants may face when forced to seek assistance from experts from another state. The local medical examiner, who usually works in conjunction with the police and the prosecutors, may be perceived by jurors as more credible. The medical examiner is a salaried employee of the government who, to typical jurors, would not appear to have an agenda. On the other hand, the defense expert who comes from out-of-state may appear as a “hired gun,” and would say whatever the defense asks because of the fee they are receiving. Jurors might focus on this issue rather than the sometimes difficult to understand forensic content of the expert’s testimony challenging the prosecution’s expert. A local medical examiner who regularly practices in the state, and more often than not testifies on behalf of the prosecutor in criminal matters, may be perceived as more credible by the jurors.

In a case where experts disagree about a key component of the case, credibility is of the utmost importance.

As noted above, Minnesota has an abundance of expert medical examiners who could be available to assist either side in a criminal case. MC&MEA drafted a letter regarding its concern over this issue to the Innocence Project of Minnesota. MC&MEA’s board cautioned that “impeding the ability of defense attorneys to consult with [forensic pathologists]—whether by

142. Id.
contract or coercion—will escalate the costs of trials as attorneys are forced to look outside Minnesota for second opinions. This could potentially interfere with the defendant receiving a fair trial.”

IV. CONCLUSION

It is clear that medical examiners should not be prevented through either coercion or contract from working with the defense. Prosecution and law enforcement are already advantaged by their necessarily close relationship with their own local medical examiner. They should refrain from doing anything that would prevent that medical examiner from working with the defense in another county.

The facts of the *Beecroft* case illustrate the necessity of independence for medical examiners and raise concerns about the availability of valuable forensic evidence to defendants in criminal cases. The evidence given by experts is often relevant to establishing reasonable doubt in criminal prosecutions and can be crucial in establishing the guilt or innocence of a defendant. It is a violation of due process to intimidate or prevent an expert witness from working with a criminal defendant. Further, there are benefits to the criminal justice system as a whole from allowing and encouraging medical examiners to work with criminal defendants, including significant cost savings and efficient use of limited resources.

In Minnesota, medical examiners and coroners are independent; the legislature has recently affirmed that independence by statute. Medical examiners sought that independence for a variety of reasons, including the improvement of their profession through peer review as a method of quality control. This independence will also help protect experts from feeling fear for their livelihoods and will enable defendants to have full access to experts in trials. Above all, justice will be best served

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145. *Id.*
146. See supra text accompanying notes 88–91.
147. See supra notes 34–54 and accompanying text.
149. See supra text accompanying notes 120–137
150. See supra text accompanying note 27.
151. See supra text accompanying notes 112–115.
152. See supra text accompanying notes 34–45.
if medical experts are beholden only to science and to the truth, not to whichever party first asked for their opinion or pays their salary.

Although change may come too late for Beecroft’s case, these protections will assist future defendants in increasingly complex situations involving areas of forensic science where experts are required to assist the court in understanding conflicting testimony. By allowing and encouraging defense access to local qualified experts, criminal defendants will truly be afforded due process of law, and future wrongful convictions can be prevented.